

In the United States Bankruptcy Court

for the

Southern District of Georgia

Brunswick Division

FILED

at 8 O'clock 30 min AM
Date 11/16/01

MICHAEL F. McHUGH, CLERK
United States Bankruptcy Court
Savannah, Georgia PB

In the matter of:

CAROL LYNN BROCK

Debtor

Chapter 7 Case

Number 01-21052

ORDER ON MOTION TO AVOID LIEN

Debtor Carol Lynn Brock ("Debtor") filed her bankruptcy petition July 16, 2001.

Chapman Funeral Home ("the funeral home") holds a security interest in all assets of Debtor pursuant to a judicial lien issued in a consent judgment arising from unpaid funeral home services.

Because the judgment lien impairs the exemptions to which Debtor would be entitled for those assets, Debtor moves this Court to allow the bankruptcy estate to avoid the lien under 11 U.S.C. § 522(f).

The funeral home objects to Debtor's motion on equitable grounds based on the refusal by Debtor and her husband ("the Brocks") to pay the debt despite the funeral home's patience in dealing with the Brocks. Clyde Allison Chapman, Jr., the operator and president of the funeral home, acted on several occasions to help the Brocks. First, he refrained from suing the Brocks for a period of time based on his belief that he would be paid from the proceeds of a personal injury case. Second, after the judgment was rendered, he agreed to subordinate the judgment lien to allow the Brocks to refinance their house. Third, he later agreed to allow Debtor's husband to "work off" the debt by contributing his labor to a funeral home construction project.

Debtor
Debtor's Atty. Orange
Creditor Chapman Funeral Home
Creditor's Atty. Pleasants
Trustee Southern
U. S. Trustee

The funeral home contends that the Brocks' continuing refusal to pay the debt, despite Mr. Chapman's efforts to work with the Brocks and to facilitate an alternative method of payment, entitle the funeral home to an equitable exception to the avoidance provisions of § 522(f).

Section 522(f) provides that a debtor "may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under [§ 522(b)], if such lien is a judicial lien" 11 U.S.C. § 522(f)(1)(A). Section 522(b) entitles an individual debtor to

exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. . . . Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize

Because Georgia, which has opted out of the exemptions provided in § 522(b), "does not so authorize," Debtor is restricted to claiming exemptions available under state and nonbankruptcy federal law, *see* § 522(b)(2)(A). Under applicable Georgia law, an individual debtor may exempt for purposes of bankruptcy certain property interests, including:

(1) The debtor's aggregate interest, not to exceed \$10,000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . . ;

. . . .

(3) The debtor's interest, not to exceed the total of \$3,5000 in value, in all motor vehicles;

....

(5) The debtor's aggregate interest, not to exceed \$500.00 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(6) The debtor's aggregate interest, not to exceed \$600.00 in value plus any unused amount of the exemption, not to exceed \$5,000.00, provided under paragraph (1) of this subsection, in any property;

....

O.C.G.A. § 44-13-100 (a) (1), (3), (5), (6).

Here, Debtor claimed an exemption in her vehicle, jewelry, and personal effects aggregating \$6,220.00, which is within the limits provided in the Georgia Code.¹ The funeral home has not produced, nor has this Court located, any authority in favor of allowing equitable exceptions to the exemptions claimed by Debtor. In fact, relevant authority supports avoiding liens under § 522 even in situations more equitably challenging than the instant situation.² Therefore, the funeral home's lien may be avoided to the extent that it impairs the exemptions to which Debtor is entitled.

¹ Debtor claims the following exemptions, totaling \$6,220, on Schedule C: (1) 1994 Nissan (\$5,020); (2) household furnishings (\$600); (3) wearing apparel (\$500); and (4) wedding band, watch, bracelet, costume jewelry (\$100). Pursuant to § 44-13-100, Debtor may exempt the \$100 value of her jewelry, \$3,500 of the Nissan's value, and up to \$5,000 of the remaining value of her exemptions.

² See, e.g., In re Ash, 166 B.R. 202, 204-05 (Bankr. D. Conn. 1994) (holding that judicial lien may be avoided in its entirety even though debt is potentially nondischargeable); In re Cross, 164 B.R. 496, 496-500 (Bankr. E.D. Pa. 1994) (adopting formulation of §522(f)(1) which eliminates entire judicial lien despite equitable argument of holder of subordinated lien that debtors should be permitted to avoid only their homestead exemption allowance).

Pursuant to the foregoing, IT IS THE ORDER OF THIS COURT that Debtor's motion is granted and the funeral home's lien is avoided.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15th day of November, 2001.